

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR DEPARTMENT OF HUMAN SERVICES

In the Revocation of the License of Ann  
Hanson to Provide Family Child Care

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara J. Runchey on July 28, 2009, at the Blue Earth Justice Center in Mankato, Minnesota 56001. The record was closed with the submission of letter briefs and proposed Findings on August 13, 2009.

Susan B. DeVos, Assistant Blue Earth County Attorney, appeared on behalf of the Department of Human Services. Charles H. Thomas appeared on behalf of Ann Hanson.

**STATEMENT OF ISSUES**

Consolidated for hearing are appeal requests by Ann Hanson and Brett Hanson and include:

1. Does a preponderance of evidence support the County's determination that Brett Hanson committed maltreatment by physical abuse on JRM on June 9, 2008?

The Administrative Law Judge concludes that a preponderance of the evidence supports the determination that Brett Hanson physically abused JRM on June 9, 2008 and that such act constitutes maltreatment.

2. Does a preponderance of the evidence support the County's determination that Brett Hanson is disqualified because he committed serious maltreatment of JRM?

The Administrative Law Judge concludes that a preponderance of the evidence, including third party reports of Brett Hanson striking JRM on June 9, 2008 and photographs substantiating JRM's injuries, supports Brett Hanson's disqualification based upon serious maltreatment.

3. Does a preponderance of the evidence establish Brett Hanson should be disqualified because he committed an act which meets the definition of misdemeanor domestic assault?

The Administrative Law Judge concludes that a preponderance of the evidence supports Brett Hanson committed domestic assault on JRM on June 9, 2008 in that Brett Hanson inflicted bodily harm upon JRM.

4. If Brett Hanson has a disqualifying characteristic, does he pose an immediate risk of harm to persons served by the program where he will have direct contact with, or access to, people receiving services?

The Administrative Law Judge concludes after considering relevant factors of Minn. Stat. § 245C.22, subd. 4, that Brett Hanson poses a risk of harm to the persons served and concludes that his disqualification should not be set aside.

5. Should the family child care license of Ann Hanson be revoked because of the presence of Brett Hanson who is disqualified in order to protect the health, safety and rights of children receiving services from a DHS-licensed program?

The Administrative Law Judge concludes that Ann Hanson's license should be revoked because Brett Hanson is living in her home and has a disqualification that is not set aside or for which a variance has been granted.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Ann Hanson obtained her license as a family child care provider in approximately April, 2008.<sup>1</sup>

2. Licensee married Brett Hanson on or about June 20, 2006. Ann Hanson has two children from a previous relationship, namely JRM born February 10, 1995 and SCM born March 7, 1997. The parties have a joint child namely, KH, who is two years of age.<sup>2</sup>

3. On or about June 10, 2008, Kathy Kopka, Blue Earth Child Protection Worker, received a child protection report involving JRM who was the alleged victim of an assault which occurred on June 9, 2008 at Bray Park. She conducted an investigation. In the course of her investigation she reviewed prior Blue Earth County Assessments and/or investigations involving Ann Hanson, Brett Hanson, JRM and SCM, a June 11, 2008 Incident Report, photographs taken by Deputy Wendler, a transcribed statement of JRM and also personally interviewed Brett Hanson, Ann Hanson, JRM and SCM.<sup>3</sup>

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<sup>1</sup> Testimony of Ann Hanson

<sup>2</sup> *Id.*

<sup>3</sup> Test. of Kathy Kopka

4. In the Incident Report dated June 11, 2008, two witnesses reported to Officer Wendler that they observed a male (later determined to be Brett Hanson) chase JRM and that Brett Hanson struck JRM with "what appeared to be his elbow/forearm and knock the child down to the ground." The witnesses also reported that Brett and Ann Hanson then grabbed JRM and walked him back to the camper. Another witness reported that Brett Hanson grabbed JRM "by the back the neck and then slapped him alongside the head." JRM reported to Officer Wendler that his step-dad, Brett Hanson, "had beaten him up and that it had all started over a fishing pole." JRM's sister, SCM, also confirmed that she saw Brett Hanson "hit JRM while they were in the tent." Ann Hanson reported that JRM was out of control and that she "slapped JRM in the face because of his actions and how he was talking to his parents." Brett Hanson reported that JRM was out of control and was verbally abusive to him and his mother. Brett Hanson denied hitting JRM but did admit to "grabbing JRM by the back of the neck and slapping him when they were in the tent."<sup>4</sup>

5. Photographs were taken of red marks and scratches on JRM's neck, shoulder, back, and face.<sup>5</sup>

6. JRM did not receive medical treatment for his injuries.<sup>6</sup>

7. In a transcribed statement of JRM taken by Officer Wendler on June 10, 2008, JRM explained how the incident occurred. JRM alleged that Brett Hanson called his dad "a fucking loser and pussy" and mocked him by using a "baby voice" and that Brett Hanson had "grabbed me by the hair and the back of the neck and started, um, hitting me like on the back and the face and everything." JRM also indicated in the interview that he "ran away and he chased me and grabbed me by the arm and was twisting my arm . . ." and that he fell down.<sup>7</sup>

8. In the course of her investigation, Kathy Kopka also reviewed previous department history involving Ann Hanson, Brett Hanson and JRM. There were several prior summary reports involving JRM and Ann Hanson which were not specific as to who and what occurred.<sup>8</sup>

9. Kathy Kopka also met with Ann, Brett, JRM and SCM on June 12, 2008. According to Ms. Kopka, the parties related the June 9, 2008 incident essentially identical to that reported by Officer Wendler in his Incident Report.<sup>9</sup>

10. Based upon her review of the history, the police report, the photographs and her interview with the family, Ms. Kopka testified that she concluded that JRM was the victim of physical abuse inflicted upon him by Brett Hanson other than by accidental

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<sup>4</sup> Ex. 1

<sup>5</sup> Ex. 2

<sup>6</sup> Test. of K. Kopka and A. Hanson

<sup>7</sup> Ex. 17

<sup>8</sup> Test. of K. Kopka

<sup>9</sup> *Id.*

means and that child protective services were needed. She notified Brett Hanson and Ann Hanson by letters dated June 24, 2008 of her assessment. The Results of the Assessment indicated: "We determined that abuse occurred and child protective services are needed. The reasons for the determinations are based on a police report, photos of the marks on [JRM's] neck and shoulders, and witness reports of [JRM] being grabbed by the neck and hit."<sup>10</sup>

11. Holly Holland, Blue Earth County Child Care Licenser who was assigned to work with Ann Hanson, spoke with Ms. Kopka and reviewed the Results of Assessments sent by separate letters to Ann Hanson and Brett Hanson dated June 24, 2008 to determine if any criteria for disqualification was met.<sup>11</sup> She also independently reviewed police reports and photographs and did not personally interview any parties.<sup>12</sup>

12. Thereafter, Brett Hanson and Ann Hanson were notified by separate letters dated July 30, 2008 that a background study was conducted which indicated that Brett Hanson was disqualified from direct contact with, or access to persons served by the program due to a determination of serious maltreatment of a minor under Minn. Stat. § 626.556 which occurred on June 9, 2008. Both were notified of their right to seek reconsideration of the disqualification.<sup>13</sup>

13. Brett and Ann Hanson also requested reconsideration of Blue Earth County Human Services determination of child abuse. By letter dated July 22, 2008, the director of Blue Earth County Human Services sustained the finding of child abuse.<sup>14</sup>

14. On or about August 24, 2008, Brett Hanson filed a Request for Reconsideration which indicated that he did not have a criminal conviction arising from the June 9, 2008 incident and that a court hearing was scheduled. Brett Hanson further indicated that JRM lied to the police about him abusing JRM, and that he had a meeting scheduled with Human Services on October 28, 2008 to appeal the ruling.<sup>15</sup>

15. The Director of Blue Earth County Human Services by letter dated September 4, 2008, again reviewed the case file and information received from child protection and child care licensing staff and upheld the finding of child abuse and subsequent disqualification from child care.<sup>16</sup>

16. A Criminal Complaint dated August 8, 2008, was issued against Brett Hanson charging him with two counts of Misdemeanor Domestic Assault in violation of Minn. Stat. §§ 609.2242, subd. 1(1) and 609.2242, subd. 1(2). The Statement of Probable Cause indicated that on June 9, 2008, the investigating officer met with

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<sup>10</sup> Ex. 4

<sup>11</sup> Test. of Holly Holland and Exs. 3 and 4

<sup>12</sup> Test. of H. Holland

<sup>13</sup> Exs. 6 and 7

<sup>14</sup> Ex. 5

<sup>15</sup> Ex. 9

<sup>16</sup> Ex. 10

witnesses who had reported that Brett Hanson knocked JRM down with his elbow or forearm and that Brett Hanson and Ann Hanson then grabbed him by his arms and walked him back to a camper. Another witness reported seeing Brett Hanson running after JRM, grabbing him “by the neck and slap him along side the head.” During the investigating officer’s interview with JRM, JRM reported to the officer that he was arguing with both his mother and Brett Hanson; that Brett then came in the tent where he was sitting and hit him hard in the face with an open hand; that Brett began to insult JM’s biological father at which time JRM became upset and began to insult Brett; that Brett then grabbed him by the hair and neck and began to hit him on the back and face; that Brett Hanson was mocking him and tapping him on the leg and that he ran from Brett Hanson who then chased him and grabbed his arm and twisted it. JRM’s sister also reported to the investigating officer that Brett Hanson hit JRM on the head and face. Ann Hanson reported to the officer that she heard Brett Hanson “spank” JRM but did not see it and that she did not know if he slapped JRM. Brett Hanson reported to the investigating officer that he spanked JRM on the butt twice, but could not recall hitting or grabbing him. Marks and bruising were noted on JRM’s neck and shoulders.<sup>17</sup>

17. In a handwritten letter dated September 11, 2008, JRM indicated that “some” things he said in the taped interview at Bray Park were not true including that when Brett was chasing him, he fell and that Brett Hanson “didn’t knock me down”; “that he was being rude to his mother and Brett Hanson”; that the bruises on “his back didn’t come from him they came from my fall”; that “he didn’t beat me up” and that “Brett was not being abusive when he tried to spank me I was moving and hit me in different places by accident.”<sup>18</sup>

18. Reports involving JRM were disclosed to Ann Hanson pursuant to an Information Disclosure Request. The reports contain allegations of conflict between Ann and JRM and also show that JRM has shown behavioral issues, and that he has lied to school officials and his parents in the past.<sup>19</sup>

19. According to Ann and Brett Hanson, JRM has been diagnosed with behavioral problems and was enrolled at the Minnesota Valley Education Center in February, 2009.<sup>20</sup>

20. Ann Hanson testified that problems involving JRM began in approximately 2002; that JRM has been diagnosed with behavioral issues including ADHD, that JRM gets angry, has a short fuse, hits people and destroys property. She also testified that police have been called to their home in the past when JRM threw something at SCM; that JRM lies and she has tried unsuccessfully to work with mental health professionals regarding JRM’s behaviors.<sup>21</sup>

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<sup>17</sup> Ex. 8

<sup>18</sup> Ex. D

<sup>19</sup> Ex. A

<sup>20</sup> Test. of Brett Hanson and A. Hanson

<sup>21</sup> Test. of A. Hanson

21. Ann Hanson further testified that JRM was being verbally abusive on June 9, 2008; that Brett Hanson did not hit JRM at Bray Park although he did spank him, and that she was the one who slapped JRM on the left side of his face. She testified that JRM's fall was accidental and that is how he got scratches on his arm, neck and back.<sup>22</sup>

22. Two daycare parents testified that Ann Hanson was an exemplary child care provider, that they were aware of JRM's behavioral issues and that they have no concerns about Brett Hanson with their children.<sup>23</sup>

23. Brett Hanson testified that the marks on JRM's face, back, neck and shoulder resulted from the accidental fall taken by JRM when he was running away from him and that the mark on his face was the result of a slap by Ann Hanson; that JRM was using abusive language on June 9, 2008; that he never intended to hit JRM; but that he did intend to spank him with an open hand; that he recalled after making his report to the investigating officer that he never grabbed JRM by the back of the neck; that he did not believe any charges would arise out of the incident; and that he pled guilty to a petty misdemeanor disorderly conduct charge because he understood that it would not affect Ann Hanson's daycare license.<sup>24</sup>

24. Brett Hanson entered a Petty Misdemeanor Petition to Enter Plea of Guilty on January 29, 2009. Relevant portions of the Petition indicated:

4. I am pleading guilty because on June 6, 2008 in the County of Blue Earth, and State of Minnesota, I committed the following acts: I raised my voice during an altercation with my child which may have caused alarm in others in the park area.<sup>25</sup>

25. As a result of Brett Hanson's guilty plea, he was fined \$50.00 plus surcharges for a total of \$124.00, and was ordered to obey all laws and have no same or similar violations.<sup>26</sup>

26. By letter dated November 25, 2008, Holly Holland, Blue Earth Child Care Licenser, notified Brett Hanson that while he was told previously he was disqualified, he was not told why he was disqualified. Her letter explains that Brett Hanson was "disqualified from direct contact with, or access to, persons served by the program due to a conviction, an admission, a preponderance of evidence of Minn. Stat. § 609.2242, Domestic Assault. This incident occurred on June 9, 2008." The letter further notified him of his right to seek reconsideration of the disqualification.<sup>27</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> Test. of Faye Nelson and Bonnie Tabor

<sup>24</sup> Test. of B. Hanson

<sup>25</sup> Ex. C

<sup>26</sup> Ex. B

<sup>27</sup> Ex. 11

27. By Letter dated November 25, 2008, Holly Holland, also notified Ann Hanson that a background study had been conducted on Brett Hanson and that information had been found that disqualified him from direct contact with, or access to, persons served by the program. According to Minn. Stat. § 245C.17, she was not told what the disqualification was based upon.<sup>28</sup>

28. Brett and Ann Hanson submitted a Request for Reconsideration dated December 2, 2008. In his Request, he asserted that JRM is a “known liar” and JRM had lied to child protection in the past, that the injuries sustained by him on June 9, 2008 were the result of a fall, and that because JRM was out of control “all we were trying to do was restrain him from running away and being abusive towards us.” Brett Hanson also asserted that criminal charges would be most likely dismissed and also related that JRM has behavioral issues that were not being adequately addressed by Blue Earth County.<sup>29</sup>

29. In February 2009, JRM was enrolled in the Minnesota Valley Education Center day program due to alleged behavioral issues.<sup>30</sup>

30. Brett Hanson was notified by letter dated March 20, 2009, that his disqualification was not set aside nor was a variance granted. The Commissioner determined that Brett Hanson has committed the following act which met the definition of a disqualifying characteristic under Minn. Stat. § 245C.15:

A preponderance of the evidence indicates that, on June 9, 2008, you committed an act which meets the definition of misdemeanor Domestic Assault, under Minnesota Statutes, section 609.2242.<sup>31</sup>

31. In determining whether Brett Hanson posed a risk of harm, the factors in Minn. Stat. § 245C.22, subd. 4 were considered and set forth as in the letter of March 20, 2009.<sup>32</sup>

32. On March 20, 2009, Ann Hanson was notified that her license was revoked due to Brett Hanson living in the household and based upon the fact he was disqualified under Minn. Stat. § 245C.15, a disqualification that was not set aside under Minn. Stat. § 245C.22 or for which a variance had not been granted under Minn. Stat. § 245C.30.<sup>33</sup>

33. Ann Hanson appealed the revocation of her license and requested a contested hearing.<sup>34</sup>

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<sup>28</sup> Ex. 12

<sup>29</sup> Ex. 13

<sup>30</sup> Test. of A. Hanson

<sup>31</sup> Ex. 14

<sup>32</sup> *Id.*

<sup>33</sup> Ex. 15

<sup>34</sup> Ex. 16

34. Consolidated for hearing were the following issues:

- a. The determination by Blue Earth County on June 24, 2008, affirmed on September 30, 2008, that Brett Hanson committed maltreatment by physical abuse on JRM on June 9, 2008.
- b. The determination of Blue Earth County on June 30, 2008, that Brett Hanson was disqualified under the background Studies Act for serious maltreatment.
- c. The determination by Blue Earth County on March 20, 2009, that the information used to disqualify Brett Hanson was correct and that preponderance of the evidence indicates that on June 9, 2008 he committed an act which met the definition of misdemeanor domestic assault, and that the disqualification of Brett Hanson was not set aside nor was a variance granted.
- d. Whether the family child care license of Ann Hanson should be revoked because of the presence of an individual-Brett Hanson-with direct contact with or access to persons served by the program who is disqualified from any such position, in order to protect the health, safety and rights of children receiving services from a DHS-licensed program.

35. The Department provided Notice of an Order for Hearing and a contested hearing was held.

36. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

37. To the extent that the Memorandum that follows explains the reasons for these Findings of Fact and contains additional Findings of Fact, including Findings on credibility, the Administrative Law Judge incorporates them into these Findings.

38. The Administrative Law Judge adopts as Findings any conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 245A.07 and 245A.08.

2. The Department gave proper and timely notice of the hearing in this matter.



3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. This is a “consolidated contested case hearing for sanctions based on . . . disqualifications” within the meaning of Minn. Stat. § 245A.08, subd.2. The scope of this contested case proceeding therefore includes appeals from Blue Earth County’s maltreatment determination involving Brett Hanson and its decision not to set aside the disqualification based upon serious maltreatment and the disqualification based upon a preponderance of the evidence that Brett Hanson committed Domestic Assault; and also the revocation of the child care license of Ann Hanson.

5. Under Minn. Stat. § 626.556, subd.10e(f), maltreatment includes physical abuse as defined in subdivision 2, paragraph (g). Minn. Stat. § 626.556 subd. 2(g) defines physical abuse in relevant part as follows:

(g) ‘Physical abuse’ means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child’s history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under section 121A.67 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by section 121A.582. Actions which are not reasonable and moderate include, but are not limited to, any of the following that are done in anger or without regard to the safety of the child:

- (1) throwing, kicking, burning, biting, or cutting of a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under the age of three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child’s breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;
- (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances which were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child’s behavior, motor coordination, or judgment or that results in sickness or internal injury, or that subjects the child to

- medical procedures that would be unnecessary if the child were not exposed to the substances;
- (9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining; or
- (10) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under section 121A.58.

6. A preponderance of the evidence demonstrates that Brett Hanson physically abused JRM on June 9, 2008.

7. Under Minn. Stat. § 245C.15, subd.4(b)(2), an individual is disqualified under section 245C.14 if less than seven years has passed since a determination or disposition of the individual's

substantiated serious or recurring maltreatment of a minor under section 626.556 . . . the elements of which are substantially similar to the elements of maltreatment under section 626.556 or 626.557 for which: (i) there is a preponderance of evidence that the maltreatment occurred, and (ii) the subject was responsible for the maltreatment.

8. Minn. Stat. § 245C.02, subd.18, defines serious maltreatment as including "abuse resulting in serious injury" and defines "abuse resulting in serious injury" to include bruises and skin lacerations.

9. The photographs taken of JRM's injuries, in addition to the statements made to Deputy Wendler, demonstrate that he suffered abuse resulting in serious injury.

10. An individual is also disqualified under Minn. Stat. §§ 245C.14, subd. 1(a)(2) and 245C.15, subd. 4, if a preponderance of the evidence establishes that an individual has committed an act that meets the definition of any of the crimes listed in section 245C.15, regardless of whether the preponderance of the evidence is for a felony, gross misdemeanor, or misdemeanor level crime must be disqualified from having access to persons receiving service from a program licensed by the Department.

11. Under Minn. Stat. § 609.2242, domestic assault means (1) committing an act with intent to cause fear in a family or household member of immediate bodily harm or death; or (2) intentionally inflicting or attempting to inflict bodily harm upon a family or household member.

12. The Department has the burden of proving by a preponderance of the evidence that Brett Hanson committed domestic assault during the incident with JRM on June 9, 2008.

13. Minn. Stat. § 245C.22, subd.4, provides that the commissioner may set aside a disqualification if the commissioner finds that an individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the program.

14. Brett Hanson failed to demonstrate that he does not pose a risk of harm.

15. The evidence supports the decision not to set aside or grant a variance.

16. Pursuant to Minn. Stat. § 245A.07, subd, 3, the commissioner may suspend or revoke a child care license if an individual living in the household where the license services are provided or is otherwise subject to a background study has a disqualification which has not been set aside.

17. Under Minn. R. 9502.0335, subp.6, a provider's license shall be revoked, not renewed or suspended, if any person living in the daycare residence has a disqualification that is not set aside or for which a variance has not been granted.

18. Because Brett Hanson is a disqualified individual and his disqualification has not been set aside and no variance has been granted and since he continues to reside in the home of Ann Hanson, there is a sufficient basis to revoke the child care license of Ann Hanson.

Based upon these conclusions and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge respectfully **RECOMMENDS** that the Commissioner of Human Services **AFFIRM**:

(1) The determinations that Brett Hanson committed serious maltreatment and conduct meeting the definition of domestic assault in violation of Minn. Stat. § 609.2242, and that he is therefore disqualified from direct contact with children in a licensed child care program;

(2) The decision not to set aside the disqualification of Brett decision; and

(3) The revocation of Ann Hanson's child care license.

Dated: August 27, 2009

s/Barbara J. Runchey

BARBARA J. RUNCHEY

Administrative Law Judge

Reported: Digitally Recorded

## **NOTICES**

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a(b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul, MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

### **Disqualification of Brett Hanson Based on Serious Maltreatment**

The evidence supports the conclusion that Brett Hanson committed serious maltreatment under Minn. Stat. § 626.556. Minn. Stat. § 626.556, subd. 2(g) defines physical abuse as

any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated intervention, that have not been authorized under section 121A.67 or 245.825.

This provision goes on to provide that "abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury." The facts presented clearly establish that JRM suffered injuries inflicted upon him by Brett Hanson on June 9, 2008. While the explanation that the child could have sustained some of the injuries in an accidental fall while running away from Brett Hanson or from Ann Hanson, the evidence which was corroborated by independent witnesses establish that JRM's physical injuries were inflicted by Brett Hanson. While the injuries that were sustained by JRM occurred in the process of his mother and step-father disciplining him, the discipline itself was clearly excessive and physically abusive as there were resulting injuries in the form of marks and scratches. Under the totality of the circumstances, serious maltreatment of JRM by Brett Hanson occurred.

## **Disqualification of Brett Hanson Based on a Preponderance of Evidence that he Committed Domestic Assault**

The evidence submitted by Ann Hanson suggested that there were prior unsubstantiated abuse reports made by JRM; that JRM was known to have credibility issues; and that the marks and scratches photographed in Hearing Exhibit 2 could have resulted from JRM falling down rather than from abuse by Brett Hanson. However, there was more reliable and credible evidence that established by a preponderance of evidence, that Brett Hanson committed serious maltreatment of JRM on June 9, 2008. The fact that JRM may have been untruthful in the past does not obviate the facts of the June 9, 2008, incident where there were three other reliable witnesses who witnessed hitting and pushing of JRM by Brett Hanson. There were also photographs that substantiated that JRM's injuries were more than just superfluous injuries. Finally, both Ann and Brett Hanson gave statements to the investigating law enforcement officer and the child protection worker that physical abuse by Brett Hanson had been inflicted upon JRM. Additionally, a preponderance of the evidence also established that Brett Hanson engaged in conduct meeting the definition of domestic assault in violation of Minn. Stat. § 609.2242. The fact that Brett Hanson eventually plead guilty to petty misdemeanor Disorderly Conduct is immaterial because there was a factual basis to support the conclusion that he committed the crime of domestic assault in violation of Minn. Stat. § 609.2242. Under Minn. Stat. § 245C.15, subd. 4, any violation of Minn. Stat. § 609.2242 is disqualifying without regard to whether the evidence supports a felony, gross misdemeanor, or misdemeanor level crime.

## **Set Aside or Variance**

The burden of submitting sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by a license holder is on the individual. Brett Hanson failed to submit sufficient evidence to show he did not pose a risk of harm. Brett Hanson's primary argument was that he did not physically abuse JRM. While the June 9, 2008 incident involving JRM occurred over one year ago and there have been no further incidents involving JRM and Brett Hanson, very little time has elapsed since the event. Although Brett Hanson's disqualification is based upon a single event, the act of violence and harm (scratches and skin lacerations) suffered by JRM is troubling. The account of the incident by Brett Hanson is also not consistent with other eyewitness accounts and is significantly minimized by Brett Hanson. In Brett Hanson's request for reconsideration and at the hearing, he accepted no responsibility for the incident, instead blaming the incident and his response thereto upon a 13-year-old child whom he calls a "liar." While JRM may in fact be a troubled youth and may have himself acted inappropriately, Brett Hanson's lack of remorse and failure to accept any responsibility for the incident exhibits a clear lack insight as to how to respond to challenging behaviors. While two child care families indicated they had no concern with Brett Hanson being around their children, it is unknown how he will react if confronted with similar challenging behaviors by other children. No evidence was presented by Brett Hanson to demonstrate successful completion of training or rehabilitation.

## **Revocation**

In determining whether the revocation of Licensee's child care license is appropriate, the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety or rights of persons served by the program must be considered. Licensee indicated that she would not consider a separate daycare home nor removal of her husband, Brett Hanson, from the home so that he could not have direct contact with persons receiving services from Licensee. The language of Minn. R. 9501.3335 is unambiguous. It states that a license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the daycare residence or present during the hours children are in care, or working with children:

D. Has a disqualification under Minn. Stat. § 245C.15, that is not set aside under Minn. Stat. § 245C.22, or for which a variance has not been granted under Minn. Stat. § 245C. 30.

**B. J. R.**